

## Article

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Subject : Rumours of the demise of the French *taxe d'habitation* appear, for the moment, to be greatly exaggerated.

Date : 6<sup>th</sup> February, 2023.

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**La *taxe d'habitation*. Are you affected by the new French administration's online service "*Biens immobiliers*" available on « *mon espace* » on [impots.gouv.fr](http://impots.gouv.fr) ? If you own a property in France, care is needed.**

As part of the gradual removal of principal residences in France from the scope of *la taxe d'habitation* (occupier's rate), the French administration has been putting into place a data gathering tool in order to evaluate both the actual state of recovery of tax on immovable property, but also the potential tax return on immovable property generally. The position is therefore in a state of flux with new details being added to the overall tax code linking that information to the different taxes involved: these are not limited to rates, but to, for example, the 3% annual tax on immovable property entities and information for income tax and capital gains tax.

The *taxe d'habitation* has not been repealed over secondary residences. The *dégrèvement* is meant to apply only to principal residences.

There is a fundamental principle of French tax law that the framework and content of the declarations concerned in fact defines the application of the tax concerned. Here the declarative régime appears to attempt to separate the exempt wheat from the chaff of properties falling outside the exemption, of which the owner has retained *la jouissance* whilst appearing to be occupied.

As from 1st January 2023, a new declaration has been introduced by [article 1418 du code général des impôts](#) which requires owners of buildings, whether these be individuals or corporate to file on

line to obtain the *dégrèvement* or exemption of their principal residence from *la taxe d'habitation*, which remains in force for all secondary residences. The implementing decree has yet to be published. It will be detailed as the administration is currently only issuing press releases despite the fact that the declaration is now on line for those able to access it.

However, the compliance responsibility goes further than that in that where the owner has retained the *jouissance* (i.e. the *usufruit* of the premises, but has allowed a third party or parties to occupy the premises under a lease or other arrangement (i.e. the premises are not their principal residence), the declaration has to be filed.

Note that the declaration is filed by internet where the owner's principal residence is equipped with an internet access. Where there is no internet connection to their principal residence, the administration is still insisting that declarations will be needed by the taxpayers concerned. There is no paper declaration available or technically envisaged: computerization is the order of the day.

Article 1418	Translation
<p><i>I. Les propriétaires de locaux affectés à l'habitation sont tenus de déclarer à l'administration fiscale, avant le 1<sup>er</sup> juillet de chaque année, les informations relatives, s'ils s'en réservent la jouissance, à la nature de l'occupation de ces locaux ou, s'ils sont occupés par des tiers, à l'identité du ou des occupants desdits locaux, selon des modalités fixées par décret.</i></p> <p><i>Sont dispensés de cette déclaration les propriétaires des locaux pour lesquels aucun changement dans les informations transmises n'est intervenu depuis la dernière déclaration.</i></p>	<p>I. Owners of residential properties are required to file with the tax administration before the 1st July of each year, if they have kept the legal possession and enjoyment (<i>jouissance</i>) the information concerning the occupation of these premises, or if these are occupied by third parties, the identity of the occupiers of the said premises according to the procedure laid down by decree</p> <p>Are exempt from this declaration, the owners of properties for which no change in the information sent has taken place since the last declaration.</p>
<p><i>II. Cette déclaration est souscrite par voie électronique par les propriétaires dont la résidence principale est équipée d'un accès à internet.</i></p> <p><i>Ceux de ces propriétaires qui indiquent à l'administration ne pas être en mesure de souscrire cette déclaration par voie électronique ainsi que les propriétaires dont la résidence principale n'est pas équipée</i></p>	<p>II. This declaration is sent by internet, by owners whose principal residence is equipped with an internet connection. Those owners who indicate to the administration that they are unable to file this declaration by internet and those owners whose principal residence is not equipped with an internet connection use the other means put at their disposal by the</p>

<i>d'un accès à internet utilisent les autres moyens mis à leur disposition par l'administration.</i>	administration.
<i>Ndlr : Les dispositions du présent article s'appliquent à compter des impositions établies au titre de 2023 (Loi 2019-1479 du 28 décembre 2019 art. 16, VII-E).</i>	<i>Note confirming that the declaration applies as from tax year 2023</i>

As a result, all “owners” under this definition have until midnight 30th June 2023 to declare to the French tax administration the category/type of occupation of the residential buildings which they own. To enable that a new online service has been installed on [impots.gouv.fr](http://impots.gouv.fr) in the *Espace Particulier* under the Tab (onglet) « *Biens immobiliers* ». To access the declaration, you would need to be able to create a space as a non-resident. The dividing line between a French resident taxpayer and a non-resident leasing out their French property and paying French income tax is becoming potentially diminished.

This declarative obligation affects all owners, **resident or not**, whether these be *propriétaires, nus-propriétaires* (whether in individed ownership or not) and *usufruitiers* (albeit that these are not owners under French law, but have the *jouissance* of the property under a real right. It also affects *sociétés civiles immobilières* (SCI) who, being French companies, can make their declaration on their secure *espace sécurisé* « *professionnel* » on [impots.gouv.fr](http://impots.gouv.fr), after connecting and registering on the service « *Gérer mes biens immobiliers (GMBI)* »

What happens to legally “opaque” foreign companies owning property in France is a separate issue as is the treatment of non-resident *usufruitiers* who rent the property out using the legal right to do so under the *jouissance* conferred by the *usufruit* right *in rem*. There appears to be no movement in this area yet.

The grant of a lease over a French property in French terms confers the legal *jouissance* of the property to a third party for a specific term. Confirmation of the territorial extent and scope of the declarative responsibility and the scope of the effect on non-resident “owners” is awaited.

### ❖ Recent purchases

If a building has been, acquired recently and the immovable transaction executed through a *notaire* it is possible that a property will not yet appear under the Tab « *Biens immobiliers* » in a French individual's « *espace Particulier* ». The purchase deed drafted by the *notaire* needs to have been published as registered by the *services de la publicité foncière* for the purchaser to be identified as

the owner. In this case, French taxpayers will not need to act as their *espace personnel* will be automatically updated when the acquisition of the property is published on the register.

However, the declarative obligation raises at least two questions: how does this affect non-resident owners of what are generally second homes and how would it affect indirect ownership through foreign corporates or other entities such as trusts or even French *translucid* companies other than *société civiles immobilières*?

Article 1418 CGI is very specific to French individual “owners” or those owning through a civil company – an SCI. Whilst the declaration mechanism announced arguably does not cater for non-resident owners, whether they have internet connection to their principal residence abroad or not; the obligation to declare remains absolute and does also place the requirement on non-resident owners of secondary residences in France.

#### ❖ Usufruits “owned” by non-residents

To be clear, a *usufruitier* is not a *propriétaire* but an “owner” of an immovable right *in rem*, which article 1418 caters for by indirect reference to the legal *jouissance* which the *usufruitier* is possessed under articles 578 and 948 *Code civil*:

##### *Article 578*

*L'usufruit est le droit de jouir des choses dont un autre a la propriété, comme le propriétaire lui-même, mais à la charge d'en conserver la substance.*

##### *Article 948.*

*Il est permis au donateur de faire la réserve à son profit ou de disposer, au profit d'un autre, de la jouissance ou de l'usufruit des biens meubles ou immeubles donnés."*

#### ❖ The declaration itself

The declaration is available online for those fortunate individuals having an *espace particulier* on [impots.gouv.fr](http://impots.gouv.fr).

For the moment, there seems to be little movement or progress towards any clarification or formal change in the current filing requirements for non-resident direct or indirect owners of properties in France occupied by lessees or by other third parties. Article 1418 CGI relies heavily on the notion of a French principal residence, which implies French fiscal residence under article 4 of the same *Code général des impôts*.

Article 1770 CGI sets the penalty for non-declaration or incomplete or inexact declarations according at 150 € by each property concerned. However, where a different penalty or one of a higher amount is due on the same facts or for other reasons the 150€ will not be charged.

To date there has been no formal administrative instruction as to how the declaration system is to operate, just a press release stating that the online declaration function is available.

No paper declaration is available or apparently envisaged.

Exceptionally, whilst article 1418 CGI accepts that owners whose principal residence is not equipped with internet access and those owners who indicate that they are not able to file electronically can use other means put at their disposal by the administration, that is not helpful to a non-resident.

The administration has not put in place any *Cerfa* type paper declaration. It has indicated that owners who cannot connect to the internet and therefore file on line through an *espace particulier* should contact their tax department by using the France Services network access, contact centres or the local tax department for individuals of where the property situated. Access through that general internet portal is not simple.

In short, the initial framework is designed for French resident owners of secondary residences but still requires non-resident individuals to file by France Services, which is impossible given the entry requirements (code postal) to set up an account. It might be possible to use the *code postal* of the secondary residence in France.

The penalties of 150€ per omission per property cannot be applied if the decree implementing the declarative regime under article 1418 has not been published by 1<sup>st</sup> July, 2023.

So, watch this space, as there might be attempts at an extension of the declarative framework by decree and the future ramifications as far as information available to the French tax administration as far as secondary homes are concerned could be important.

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